IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.MC.No. 2366 of 2007()

CP.43/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED NO.1:

HAFSAL, S/O. ABOOBACKER,
AGED 27 YEARS, VEETTILEPURAYIL KUNHIMANGALAM P.O.,
KANNUR.

BY ADV. SRI.G.SUKUMARA MENON
SMT.DEEPTHI S.MENON

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO.2366 OF 2007

Dated this the 25th day of July, 2007

ORDER

The petitioner was the accused in a crime registered in 1999 for offences punishable, inter alia, under Secs.307 and 153-A read with Sec.149 of the IPC. Investigation was completed. Final report was filed. The petitioner was arrayed as accused No.2. The petitioner was not available to be proceeded with. The co-accused were proceeded with. They were committed to the Court of Session. In the trial conducted, there was no evidence against those accused. They were found not guilty and acquitted. Subsequently, one of the accused came to this Court with a prayer for quashing the proceedings against him on the ground that the co-accused have already been acquitted in the trial held against them. By Annexure-A2 order, another Bench of this Court had quashed the proceedings against the said accused i.e., accused No.5.

The petitioner has now chosen to appear before this Court with a prayer that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings against him.

2. What is the reason? The only reason urged is that the co-accused have already been tried and acquitted by the learned Sessions Judge. After the decision in **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552), it is trite that the mere fact that the co-accused, who faced trial, were found entitled to acquittal on the basis of the evidence adduced in such trial is no reason for an absconding co-accused to claim any benefit or advantage from such acquittal. In the instant case, I see from Annexure-A1 judgment that it was not a case where the incident was not disputed. The involvement of the accused facing trial was disputed. There are indications to show that the accused, who faced trial, had settled their disputes with the complainant and that led to the hostility of the complainant and his witnesses. These are certainly not the circumstances, after the decision in **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552), which would justify the invocation of the powers under Sec.482 of the Cr.P.C. in favour of an accused person like the instant case. The fact that Annexure-A2 order was passed in favour of another absconding co-accused prior to the dictum in **Moosa v. Sub**

Inspector of Police (2006 (1) KLT 552) is no reason for this Court now to invoke such powers under Sec.482 of the Cr.P.C.

3. Finally, the learned counsel for the petitioner submits that warrant of arrest issued by the learned Magistrate is chasing the petitioner. According to the petitioner, he is innocent. His absence earlier was not wilful. It was due to reasons beyond his control. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned

Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge